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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the International Council of Environmental Law, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 August 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

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OBSERVATIONS ON THE RIGHT TO WATER AS A HUMAN RIGHT

Following an examination of State practice in respect of access to water, the European Council on Environmental Law (ECEL) concluded that "Each person has the right to water". In a resolution adopted in April 2000 (annexed hereto), ECEL specifies the content of the right to water, states that the right to water cannot be dissociated from other human rights that have already been recognized and invites Governments to take action to guarantee the right to water for all. The resolution takes up the theme of the Madeira Declaration[1] on the Sustainable Management of Water, in which ECEL stated the following principle: "No person may be deprived of the amount of water needed to meet his basic needs".

1. Scope of the right to water

The right to water concerns household access to a supply of water and to waste-water disposal facilities through a water service run by public or private bodies.

The right to water means guaranteeing a minimum quantity of water for everyone that is "sufficient for life and health", i.e. sufficient to meet basic needs such as drinking-water, cooking and hygiene, and for the small-scale production of family food crops (kitchen garden). This quantity probably exceeds 40 litres per person per day in cities in the industrialized countries but is far less than average per capita consumption in Europe (120 to 200 litres per day). The right to water does not extend to consumption beyond the quantity required to meet basic human needs, particularly water for agricultural production for household needs, nor does it extend to water for commercial, industrial or agricultural activities (irrigation).

2. The right to water is a human right

ECEL looked into the question of whether the right to water should be viewed as a human right. It considers that "the right of everyone to an adequate standard of living" recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights means that everyone should have access to the water to sustain his or her life. Moreover, the right to water cannot be dissociated from the right to sufficient food.

According to the Committee on Economic, Social and Cultural Rights, the human right to adequate housing includes the right to water. In 1996, the Heads of State and Government meeting at the Habitat II Conference agreed that everyone has to right of access to water supply and sanitation systems.

It follows from the recognition of the right to an adequate standard of living and to adequate food and housing as a human right that the right to water is also recognized as a human right. ECEL concludes that the **right to water already constitutes an integral part of officially recognized human rights**. There is therefore no reason to create a new human right to water.

The right to water is also closely bound up with the right to health recognized in article 12 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

The right to water is explicitly mentioned in two existing international treaties, the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989). In addition, a regional instrument prepared under the auspices of the United Nations Economic Commission for Europe, the London Protocol on Water and Health (1999), states the principle of equitable access to water for all members of the population, and the Protocol of San Salvador (1988) relating to the Americas stipulates that everyone shall have "access to basic public services". The European Court of Human Rights ruled against deprivation of access to a well used for drinking water and the Inter-American Court of Human Rights ruled against the pollution of a river that served as a water supply for the Yanomanis.

Both for humanitarian reasons and on grounds of equity, it seems only right, when using a "shared heritage", that States, local authorities and water supply services should take steps to ensure that every individual, even the most disadvantaged, has the right to water. The smaller the number of persons excluded from the right to water, the lower will be the additional costs entailed by such action. According to D. Mitterrand, M. Soares and R. Petrella, "access to water for all is a possible right. No technological, economic, financial or political reason can be invoked to prevent its realization".

In the light of the above legal and economic arguments, ECEL has proposed to Governments that they explicitly recognize the right of everyone to water as a specific right that can be enforced by law and not as a mere aspiration or political goal.

3. Content of the right to water

Recognition of a human right to water entails the rights and obligations set out below.

(i) An individual right

The right to water means that everyone may demand access to a certain quantity of water of satisfactory quality to meet his or her basic needs. Access to water does not entail an obligation to connect everyone, regardless of location, to a water distribution network; it only means that every individual should have access to drinking water in his or her neighbourhood or should be authorized to establish a connection with a distribution network.

(ii) The responsibility of the public authorities

Irrespective of the form of water service management and the degree of involvement of private companies in the service, the public authorities must exercise control over the operations of the various public or private bodies involved in water service management. This includes, in particular, the financing of works, the quality of the water, continuity of the service, pricing, drafting of specifications, degree of treatment and user participation.

(iii) A service accessible to everyone

ECEL stresses the need to ensure appropriate water pricing and continuous access to water for all. This calls, in particular, for the following measures:

(a) Coverage of costs in such a way as to ensure continuity of the service (by fixing the price of water at a level that counterbalances the cost);

(b) A price that everyone can afford (by introducing special rates or aid measures with an equivalent impact in order to provide a limited quantity of water to the most disadvantaged).

The basic financial principle for water distribution through networks is that the cost of the "water service" should "be apportioned in such a way that each person can enjoy the right to water". The price paid for water could thus be adjusted to ensure that each user has access to water in accordance with his or her means. In short, the price of water should be affordable by every consumer.

This apportionment of costs among consumers should be conducted "in each corporate body responsible for the water service", for example in distribution companies or authorities. A larger-scale equalization scheme is also possible (at the county, region or State level).

4. Enforcement of the right to water

At the domestic level, the public authorities are usually bound by strict legal obligations concerning the supply of drinking water and the treatment of waste water. Members of the population may therefore compel the public authorities at the central, regional or local levels to honour their obligations in respect of water (environmental law, right to water, regulations governing hygiene, local authority obligations, etc.).

In addition, the public authorities can take various kinds of measures to promote access to water **for all** and to facilitate the full exercise of the individual right to water. Some of these measures are of particular benefit to the poor:

(a) Improvement of the availability of drinking water

- Protection of wells and the sources of drinking water of persons who are not connected to a water supply;
- Protection of water catchment areas;
- Improvement of the quality of water distributed;
- Extension of the distribution networks;
- Installation of free water points and public fountains;

- Prohibition of interruptions in water supply without a special procedure;

- Reduction in losses of drinking water (individual networks and sanitary installations).

(b) Payment for the water distributed

- Staggering of water payments over time;

- Reduction or abolition of the fixed or subscription cost component in the pricing system; use of a strictly volume-based pricing system;

- A "social" pricing system for the first portion;

- Specific targeted social assistance for disadvantaged groups;

- Budget appropriations and social funds to prevent water-supply cuts;

- Geographical equalization of water prices and a reduced VAT rate.

In countries such as Belgium, France and the United Kingdom, the public authorities have already adopted most of the above-mentioned measures and intend to change the pricing system for drinking water to benefit the poor.

5. Conclusion

Official recognition by Governments in the developed countries of the right to water as an integral component of the body of human rights that have already been recognized internationally will have only limited financial implications because the countries in question have already implemented the right to water on a very large scale. It would basically require States to give **greater attention in the future to the water-supply problems of the most disadvantaged** members of societies in which inequality is growing and the price of water is steadily increasing. New legislation is particularly necessary when the water service is run by private companies.

References

1. ECEL: Madeira Declaration on the Sustainable Management of Water, April 1999. Text published in *Environmental Policy and Law*, December 1999, *Revue européenne de droit de l'environnement*, 2000, and IUCN Environmental Law Programme Newsletter, Sept. Dec. 1999.

2. On the specific content of the right to water in industrialized countries, see Henri Smets: "De l'eau potable pour les pauvres", *Env. Pol. Law*, 2000, "Le droit à l'eau potable" in *L'eau aux XXIe siècle*, Futuribles, Paris, 2000, and "Implementing the right to drinking water in OECD countries", ENV/EPOC(99)13, OECD Seminar, Social and Environmental Interface, 2000.

ANNEX

RESOLUTION ON THE RIGHT TO WATER

The European Council on Environmental Law,

Conscious of the grave problems posed by access to drinking water, an essential element for the survival of man;

Considering that access to water is part of a sustainable development policy and cannot be regulated by market forces alone;

Considering that while water is an economic good, it is above all a social good;

Convinced that water resources constitute a common heritage and must be used in an equitable manner and managed in cooperation with the users in a spirit of solidarity;

Taking account of the International Covenant on Economic, Social and Cultural Rights (1966) according to which "[T]he States recognize (...) the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing" (art. 11.1) and "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (art. 12);

Considering that the right to water cannot be dissociated from the right to food and the right to housing which are recognized human rights and that the right to water is also closely linked to the right to health;

Taking account of the Protocol on Water and Health (1999) adopted in London in the framework of the Economic Commission of the United Nations for Europe, which refers to the principle of "equitable access to water" which should be provided for "all members of the population" (art. 5);

Mindful of the principles of the Madeira Declaration on the Sustainable Management of Water Resources, adopted by the ECEL, on 17 April 1999;

Observing that the greater part of the population of European countries already enjoys access to water at an affordable price;

Recognizing that access to water for all should be an important element in policies to combat poverty;

PROPOSES that Governments and competent international organizations explicitly recognize - in the national, community, and international frameworks - the right of each person to water according to the following principles;

1. Each person has the right to water in sufficient quantity and quality for his life and health;

2. Public authorities must adopt the necessary measures to facilitate access to water for all and exert control over the actions of the diverse bodies, public or private, operating in water service management;

3. In each corporate body responsible for the water service the costs of the service must be apportioned in such a way that each person can enjoy the right to water;

4. In the exercise of their activities, economic actors and individuals must respect the right to water;

RECOMMENDS that public authorities ensure that drinking water is appropriately priced by the bodies responsible for the service thereof so that this good can continue to be affordable to each person.

RECOMMENDS that a significant part of development aid be used for the supply of drinking water and waste water treatment in poorly equipped countries.

Rapporteur: Henri Smets

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